

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
)	
Christian)	Art Unit: 1795
)	
Application No. 10/550,465)	Examiner: Han, Kwang S.
)	
Filing Date: March 25, 2004)	Confirmation No. 1924
)	
For: TUNGSTEN-BASED ELECTROCATALYST))	
AND FUEL CELL CONTAINING SAME))	

ELECTION UNDER RESTRICTION REQUIREMENT

MAIL STOP AMENDMENT
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

BALLARD SPAHR ANDREWS
& INGERSOLL, LLP
Customer Number 23859

May 21, 2009

Sir:

This is in response to the Restriction Requirement of April 22, 2009. In the Restriction Requirement, the Examiner requires Applicant to elect a single invention for prosecution on the merits from one of three patentably distinct inventions. The Examiner contends that these three patentably distinct inventions are those of:

- | | |
|------------|--|
| Group I: | Claims 1-3, drawn to a tungsten-based catalyst; |
| Group II: | Claims 4-9, drawn to a method of making a tungsten-based catalyst; and |
| Group III: | Claims 10-16, drawn to a fuel cell comprised of an electrocatalyst consisting of a tungsten based electrocatalyst. |

Applicants hereby elect Group III, as set forth in claims 10-16, with traverse.

Applicant respectfully requests that the restriction requirement be reconsidered. For a restriction requirement to be proper, the Examiner must satisfy the following two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121); and (2) that the search and examination of the entire application cannot be made without serious burden on the Examiner. M.P.E.P. § 803 provides:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (*Emphasis added.*)

Applicant submits that the Examiner has not shown that the second requirement has been met. Specifically, there has been no showing that it would be a *serious burden* to search and examine the two groups together.

For the reasons stated above, Applicants respectfully assert that restriction of the claims as set forth by the Examiner would be contrary to promoting efficiency, economy and expediency in the Patent Office and further point out that restriction by the Examiner is discretionary (M.P.E.P. § 803.01). Examining all of the claims together would eliminate the necessity of prosecuting multiple, separate, yet intimately related applications. Thus, Applicants respectfully request that all of the claims of this application be examined together. Consequently, reconsideration and modification or withdrawal of the restriction requirement is requested.

Should the Examiner have any questions regarding this response, the Examiner is courteously invited to contact the undersigned at the telephone number and address listed below.

No fee is believed due with this paper; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

ATTORNEY DOCKET NO. 07194.0111U2
APPLICATION NO. 10/550,465

Respectfully Submitted,

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CERTIFICATE OF ELECTRONIC TRANSMISSION UNDER 37 C.F.R. § 1.8			
I hereby certify that this correspondence, including any items indicated as attached or included, is being transmitted via electronic transmission via EFS-Web on the date indicated below.			
Name of Person Signing (Print/Type)	Kevin W. Hathcock		
Signature	/ Kevin W. Hathcock /	Date	May 21, 2009